

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 36

FRIEDA ACKERMANN, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 13, 1950

—9081

Petition for Certiorari Filed March 27, 1950.

Certiorari Granted May 29, 1950.

[fol. 1]

[Caption omitted]

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF TEXAS, AUS-
TIN DIVISION**

Civil Action No. 150

UNITED STATES OF AMERICA

VS.

FRIEDA ACKERMANN

AGREED STATEMENT & STIPULATION AS TO RECORD ON APPEAL—
Filed October 25, 1948

Defendant-appellant and plaintiff-appellee, acting through
their attorneys of record, agree and stipulate as follows:

I

This case and the case of United States vs. Hans Ackermann, Civil Action No. 132 in the United States District [fol. 2] Court for the Western District of Texas, Austin Division, wherein Hans Ackermann, defendant, is appellant, are companion cases. The points to be relied upon by the appellant in this case are the same as those to be relied upon by the appellant in said Hans Ackermann case and the same disposition should be made of this case on appeal as is made of said Hans Ackermann case on appeal.

II

In addition to the record in said Hans Ackermann case, which is made a part of the record in this case by reference without printing same in this case, the record in this case shall also include the following:

(1) Agreed statement and stipulation as to record on appeal (this instrument).

(2) Order denying defendant's motion to be relieved from final judgment (being the order from which appellant appeals).

(3) Notice of appeal to the Circuit Court of Appeals.

(4) Bond for costs on appeal.

(5) Order extending time for filing record in Circuit Court of Appeals.

III

It is understood and agreed that the United States, by this agreement and stipulation as to record on appeal, does not waive its contention that the order denying defendant's motion to be relieved from final judgment is not appealable.

George C. Dix, 60 Wall Street, New York 5, New York; Grimes & Owen, Taylor, Texas, by E. M. Grimes, Attorneys for Defendant-Appellant. (S.) H. W. Moursund, United States Attorney, San Antonio, Texas, Attorney for Plaintiff-Appellee.

Approved, this the 25th day of October, 1948.

(S.) Ben H. Rice, Jr., United States District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING DEFENDANT'S MOTION TO BE RELIEVED FROM FINAL JUDGMENT—Filed September 28, 1948

The Court having considered Defendant's Motion to be Relieved from Final Judgment filed herein on March 30, 1948, is of the opinion that there is no merit to said motion and that the same should be denied.

It Is, Therefore, Ordered that said motion be, and the same is hereby, denied.

[fol. 4] Done at San Antonio, Texas, this the 28th day of September, A. D. 1948.

Entered: Civ. Order Book, Vol. 3, page 38.

(S.) Ben H. Rice, Jr., United States District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL TO THE CIRCUIT COURT OF APPEALS—Filed
October 7, 1948

Notice is hereby given that Frieda Ackermann, defendant above named, hereby appeals to the United States Circuit Court of Appeals for the Fifth Circuit from the final judgment entered in this action on September 28, 1948, being an order denying on its merits Defendant's Motion to be Relieved from Final Judgment.

George C. Dix, 60 Wall Street, New York 5, New York; Grimes & Owen, Taylor, Texas, by E. M. Grimes, Attorneys for Defendant.

[File endorsement omitted.]

[fols. 5-8] Bond on appeal for \$250.00, filed Oct. 7, 1948, omitted in printing.

[fol. 9] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME FOR FILING RECORD IN CIRCUIT COURT
OF APPEALS—Filed October 25, 1948

This day came on to be considered by the Court the motion of defendant-appellant, Frieda Ackermann, for the Court to grant an extension of time for filing the record and docketing the appeal in the Circuit Court of Appeals, and the Court having considered same, it is Ordered by [fol. 10] the Court that said motion be, and the same is hereby, granted and that the time for filing the record on appeal and docketing the appeal in the Circuit Court of Appeals be, and is hereby, extended fifty days in addition to the forty days allowed by the applicable rule.

Done at San Antonio, Texas, this the 25th day of October, 1948.

(S.) Ben H. Rice, Jr., United States District Judge.

Approved: George C. Dix, 60 Wall Street, New York 5, New York; Grimes & Owen, Taylor, Texas, by E. M. Grimes,

Attorneys for Defendant-Appellant; H. W. Moursund,
United States Attorney, San Antonio, Texas, Attorney for
Plaintiff-Appellee.

[File endorsement omitted.]

[fol. 11] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 12] That thereafter the following proceedings were had in said cause in the United States Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of November 10, 1949

No. 12611

FRIEDA ACKERMANN

versus

UNITED STATES OF AMERICA

On this day this cause was called, and upon request of counsel, was taken under submission by the Court upon the record and briefs on file.

[fol. 13] OPINION OF THE COURT—Filed December 29, 1949

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH
CIRCUIT

No. 12611

FRIEDA ACKERMANN, Appellant,

versus

UNITED STATES OF AMERICA, Appellee

Appeal from the District Court of the United States for
the Western District of Texas

(December 29, 1949)

Before Hutcheson, Holmes, and Russell, Circuit Judges

RUSSELL, Circuit Judge:

This is a companion case to *Hans Ackermann vs. United States of America*, No. 12610. It is stipulated that the decision in this case should be the same as in that case. For the reasons there stated, the judgment of the trial Court is Affirmed.

[fol. 14] HUTCHESON, Circuit Judge, Dissenting:

I dissent for the reason given in my dissenting opinion in *Ackermann v. United States*, No. 12610, this day filed.

[fol. 15]

JUDGMENT

Extract from the Minutes of December 29th, 1949

No. 12611

FRIEDA ACKERMANN

versus

UNITED STATES OF AMERICA

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

“Hutcheson, Circuit Judge, Dissents.”

[fol. 16]

CLERK'S CERTIFICATE

UNITED STATES OF AMERICA:

UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

I, Oakley F. Dodd, Clerk of the United States Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 12 to 15 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Court of Appeals for the Fifth Circuit in a certain cause in said Court, numbered 12611, wherein Frieda Ackermann is appellant, and United States of America, is appellee, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 11 are identical with the printed rec-

ord upon which said cause was heard and decided in the said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit; this 9th day of January, A. D., 1950.

Oakley F. Dodd, Clerk of the United States Court of Appeals, Fifth Circuit. (Seal.)

(6788)

[fol. 15] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 29, 1950

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(9081)